IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3021 OF 2003

Ramchand Daulatram Chhabria & Ors. ..Petitioners.
Vs.
The Deputy Commissioner of Labour and
Appellate Authority & Ors. ..Respondents.

...

Mr. C.U. Singh, Senior Advocate with Ms. Avantika Kapur i/b Mulla & Mulla & Craigie Blunt & Caroe for the Petitioners.
Mr. P.G. Sawant, AGP for the State.
Mr. P.M. Shah for Respondent Nos.5 to 55.

WITH
WRIT PETITION NO.3031 OF 2003

Tilakdhari Dubari Yadav ..Petitioner.
Vs.
M/s. Daulatram Dyeing and Bleaching Mills ..Respondents.

...

Mr. P.M. Shah for the Petitioner.
Mr. C.U. Singh, Senior Advocate with Ms. Avantika Kapur i/b Mulla & Mulla & Craigie Blunt & Caroe for Respondent Nos. 4, 5 and 6.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

13th September, 2006.

ORAL JUDGMENT :

1. In the first of the two petitions which come up for final

hearing (Writ Petition 3021 of 2003) the employer seeks to impugn the correctness of an order dated 20th August, 2003 passed by the Controlling Authority under the Payment of Gratuity Act, 1972. The second petition, (Writ Petition 3031 of 2003) is instituted by a group of workmen questioning the correctness of an order passed under Section 33C(2) of the Industrial Disputes Act, 1947 by the Labour Court. The issues which arise in both the petitions are essentially the same and hence common arguments have been addressed before the Court by counsel appearing on behalf of the management on the one hand and by counsel appearing on behalf of the workmen. With the consent of the counsel and on their request, both the Petitions have been taken up together and are being disposed of by this judgment.

2. There was a partnership firm by the name of Daulatram Dyeing and Bleaching Mills formed by four partners. The partners were brothers by the name of Ramchand, Amarchand, Srichand and Vasudev D. Chhabria. One of the four partners issued a

notice of dissolution on 5th March, 1982 and instituted thereupon a suit for dissolution and accounts on the Original Side of this Court (Suit 371 of 1982). On 24th March, 1982, an ad interim order was passed on a Motion in the suit by which the Court Receiver came to be appointed as Receiver of the partnership business and of all the assets, books of account, papers and vouchers of the partnership. The Court Receiver was directed to permit the Defendants to the suit (the Petitioners before the Court in Writ Petition 3021 of 2003) as his agents on the conditions stipulated in the order. On 24th March, 1983 further directions were issued to the Court Receiver to appoint the party offering the highest bid before him as agent of the Receiver. On 17th December, 1986 certain directions were issued by the Supreme Court in Civil Appeal 4566 of 1986. In pursuance of the interim orders that were passed in the suit an agency agreement was executed by the three partners viz. the Fourth, Fifth and Sixth Defendants to the suit who are the Petitioners before the Court (in Writ Petition 2031 of 2003). The agency agreement inter alia provided that the agreement would be deemed to have come into

force on and from 9th December, 1983.

3. On 28th November, 1996 a Learned Single Judge of this Court was moved on the report of the Court Receiver for directions. The issue in controversy before the Learned Single Judge was in regard to the liability for the payment of gratuity to the workers, who were engaged by the erstwhile partnership. After recording the rival submissions of counsel for the Plaintiffs on the one hand and for the other contesting parties on the other, the learned Single Judge held that the business of the firm had come to an end when the Court Receiver was appointed and the liability of the firm in respect of gratuity stood crystallized on the basis of the pay then drawn by the workers. The Learned Single Judge noted that after the appointment of an agent of the Court Receiver, it was for the agent to decide whether or not to appoint the same set of workers. The agent, the Learned Single Judge, held, would not be running the business of the partnership but, would only be using the assets of the partnership to run his own business. The Court, however, observed that if

the agent of his own volition continued to employ the same set of employees, then, in so far as the workers were concerned, they would be entitled to continuity of service. The Learned Single Judge rejected the submission that the workers who were engaged by the agent of the Receiver were engaged on fresh service. It would be material to extract the relevant observations in the order of this Court dated 28th November, 1996 which are as follows :

> "This is, a Suit for dissolution of the firm. A notice of Dissolution had already been given. When the Court Receiver got appointed the business of the firm had, come to an end. The liability of the firm, even for gratuity, would be crystallized on the basis of the pay then drawn by the workers. In this case the Defendants have taken as Agency. But suppose some third party was appointed as an Agent. The Agent would not be running, the business of the Partnership. The Agent is only using the assets to run his own business. So long as the firm is concerned, the business of the firm has stopped. It was for the Agent to decide whether or not to retain the services of the same workers. The Agreement of Agency casts no obligation to continue the services. The Agent could well run some other business and employ some other workers in that business. On the other hand the Agent may run the same business and continue to employ the same employees. That is entirely choice of the agent. If the Agent of his own Volition chooses to continue to employ the same employees than so far the workers are concerned, under the statute they would get continuity of service. That continuity of service

> would be with regular increase in pay and other benefits. This however does not mean that the liability of the firm increases. The liability of the firm remains on the basis of the salary drawn on the date the Court Receiver was appointed. If there has been an increase in liability then that increased liability has to be borne by the Agent. Therefore, even though there is no dispute that gratuity has to be paid at the figures mentioned by the Court Receiver, it is clear that the firm must only pay such gratuity as would be worked out on the basis of the pay drawn by the workers on 24th March, 1982. The balance amount of the gratuity must be borne and paid by the agent. In my view submission of Mr. Modi that Court must give a finding that there is fresh service merely needs to be stated to be rejected."

4. On 5th July, 1997 an agreement was entered into between the recognized union under the Bombay Industrial Relations Act, 1946 and the agents of the Receiver. The agreement recorded that the terms thereof shall have no adverse effect on the claims of the workers for the period prior to 24th March, 1982 since the retiral benefits to be received by them as employees of the erstwhile partnership of Daulatram Dyeing and Bleaching Mills were recoverable from the Court Receiver. The workers agreed to obtain the benefit of voluntary retirement by resigning from service. Under the terms of the agreement, the

workers were to be paid gratuity for every completed year of service commencing from 24th March, 1982 until the last day of production in the mills. Similarly, retrenchment compensation under the Industrial Disputes Act, 1947 was to be computed on the same basis for every completed year of service commencing from 24th March, 1982. The agreement inter alia also provided for the payment of ex gratia. Sub clauses (a) and (b) of Clause 2 of the agreement were to the following effect :

> "2. It is agreed that the workers in order to obtain the benefits of Voluntary Retirement Scheme will immediately tender their respective written letters of resignations which in turn will be accepted by the Agents on accepting the letters of resignation, the Agents agree to pay such workers retirement benefit as per the scheme prepared by the Union as mentioned :
>
> a) Gratuity under the Payment of Gratuity Act (i.e. 15 days basic wages and dearness allowance) for each completed year of service from 24th March, 1982 onwards, till the last day of production in the mills.
>
> b) Compensation as if retrenched as contemplated under the provisions of the Industrial Disputes Act, 1947 (i.e. 15 days basic wages and dearness allowance) for each completed year of service from 24th March, 1982 onwards for period as mentioned in clause (a) above."

Clause 5 of the agreement stipulated that the terms and conditions thereof were in full and final settlement of all the claims, dues and outstandings of the workers.

5. The order passed by the Learned Single Judge on 28th November, 1996 was carried in appeal. While disposing of the appeal by an order dated 8th August, 1997, the Division Bench consisting of Mr. Justice B.N. Srikrishna (as His Lordship then was) and Mrs. Justice R.P. Desai specifically recorded that though the workmen were strictly speaking not parties to the suit, the representative union was before the Court through counsel and have been heard. The order of the Court inter alia held thus :

> "In our view, there is no need to admit this appeal. It is obvious that the terminal dues of the workmen would have to be worked out at the rates prevalent on March 5, 1982, which is the date of the dissolution of the firm. We are informed by Mr. Shetye that preliminary decree of the dissolution of the firm has already been passed. The employment of the workmen subsequent to March 24, 1982 by the appellant, as the agent of the Court Receiver is a fresh contract and if the workmen become entitled to terminal dues under this contract such dues cannot come from out of the assets of the firm."

6. Consequently, it is abundantly clear that the Division

Bench ordered and directed that since the firm stood dissolved on 5th March, 1982, the terminal dues of the workmen will have to be computed as on that date. Moreover, the engagement of the workmen subsequent to the date of dissolution by the agent of the Receiver was clarified to be a fresh contract with the consequence that the dues of the workmen on account of the fresh engagement after the date of dissolution would not be a liability in so far as the assets of the firm were concerned.

7. Factually there is no dispute before this Court that the workmen who were engaged by the agent of the Court Receiver after the date of dissolution have been paid all their terminal benefits in pursuance of the memorandum of agreement dated 5th July, 1997 that was executed with the recognized union. The payment of gratuity has been effected in terms of clause 2(a) of the agreement on the basis of the last drawn salary and having regard to the length of service rendered after the workmen were engaged upon dissolution by the agent of the Court Receiver.

8. Two sets of applications came to be filed by the workmen, one of them under the Payment of Gratuity Act,1972 and the other under Section 33C(2) of the Industrial Disputes Act, 1947. The application filed by the workmen under the Payment of Gratuity Act, 1972 was disposed of by the Controlling Authority on 20th August, 2003. The application filed under Section 33C(2) was disposed of by the Labour Court by an order dated 30th August, 2003. It is common ground before this Court that there were common applicants in both sets of applications. There were 49 applicants in the application under the payment of Gratuity Act, 1972 and 40 applicants in the application under Section 33C(2). All the 40 applicants in the application under Section 33C(2) were applicants in the application under the Payment of Gratuity Act, 1972. Consequently, the rather surprising consequence was that both sets of applications were heard in parallel proceedings by the respective authorities before whom those applications were presented. In the order that was passed on 20th August, 2003 on the applications under the Payment of Gratuity of Act, 1972, the Controlling Authority issued the following directions :

> "1) The Opponent No.1 i.e. suit firm is hereby directed to pay the gratuity amount of the applicants for the period prior to 24-3-1982 based on the wages prevalent on 5-3-1982.
>
> 2) The Opponent Nos.4 to 6 are directed to pay the balance amount of gratuity payable on last drawn wages subsequent to 24-3-1982.
>
> 3) The above amounts mentioned in Clause 1 and Clause 2 are to be paid by the Opponents as per the calculation given in Annexure of this Order.
>
> 4) The above gratuity is to be paid with 12% interest from the date of termination of service upto the realization of the order."

9. The net result of the direction was that the erstwhile partnership firm was held to be liable to pay the dues on account of gratuity of the applicant workmen for the period prior to 24th March, 1982 based on the wages that were prevalent on the date of dissolution. Opponents 4 to 6 who are the agents of the Court Receiver were directed to pay the balance of the gratuity on the basis of the last drawn wages subsequent to 24th March, 1982. The order of the Controlling Authority contained an annexure reflecting the manner in which the gratuity dues were to be calculated. Ex facie, the annexure shows that the dues on account

of gratuity have been computed on the basis that each of the workmen was in continuous service from the date on which he was originally appointed until the date of termination in 1997 or thereabout. The partnership firm has been held to be liable until the date of dissolution viz. 5th March, 1982.

10. In the order that was passed by the Labour Court on the application under Section 33C(2) of the Industrial Disputes Act, 1947, the Court relied on the observations contained in the order of the Division Bench dated 8th August, 1997 and came to the conclusion that the workmen who were appointed to carry on the business under the agent of the Court Receiver were appointed under a fresh contract. The Labour Court also adverted to the settlement that was arrived at with the recognized union on 5th July,1997. In the circumstances, the Labour Court held that the partners of the erstwhile firm would be jointly and severally liable to pay the terminal benefits upto the date of dissolution. The agents of the Court Receiver were held to be jointly and severally liable in respect of the payment of terminal dues for the period commencing

24th March, 1982 until the agency was surrendered and the assets were returned to the Court Receiver.

11. The entire controversy in the present case turns upon the question as to whether the workmen who continued with the agents of the Court Receiver would be entitled to their gratuity on the basis that they have rendered continuous service from the date of the initial appointment until 9th July, 1997. It is an undisputed position that on 9th July, 1997 all the workmen were paid their dues in accordance with the agreement dated 5th July,1997, the agency was surrendered and the assets were returned to the Court Receiver.

12. On behalf of the workmen reliance has been placed on the order of the Learned Single Judge of this Court dated 28th November, 1996, in support of the submission that if the agent of the Receiver opted to engage the same set of workers after the date of dissolution, the workmen would be entitled to the benefit of continuity of service. On the other hand, on behalf of the agents

who were appointed after the dissolution of the firm in pursuance of the interim orders passed in the suit, it has been submitted that reliance cannot be placed on the observations contained in the order of this Court dated 28th November, 1996 since those observations must be regarded as being superseded by the directions issued by the Division Bench in appeal. Moreover, it was submitted that a solemn settlement was arrived at with the recognised union on 5th July, 1997 and it is undisputed that all the workmen were duly paid the amounts due and payable thereunder.

13. In considering the rival submissions, it merits emphasis that the admitted position is that the partnership stood dissolved with effect from 5th March, 1982. In the suit for dissolution and accounts that was filed before this Court, the Court Receiver was appointed as Receiver of the business and assets of the partnership and the Receiver was directed to invite bids from the parties for the conferment of agency. The Fourth, Fifth and Sixth Defendants to the suit who submitted the highest bid were

admittedly appointed as agents of the Court Receiver and an agency agreement was entered into on 23rd January, 1990. The business of the partnership came to an end on the date of dissolution. The appointment of an agent of the Receiver in pursuance of the interim order of the Court does not operate as a continuation of the business of the partnership. An agent of the Receiver is permitted to utilise the assets of the partnership. The agent is not bound to either continue the same business or for that matter to engage the same set of employees. The order of the Division Bench presided over by Hon'ble Mr. Justice B.N. Srikrishna (as His Lordship then was) makes it abundantly clear that the liability of the erstwhile partnership in respect of the terminal dues of the workmen would have to be computed as of 24th March, 1982. The Division Bench clarified that even if the same set of employees was engaged by the agents to continue the business, that would amount to a fresh contract and, if the workmen were entitled to their terminal dues under that contract, such dues could not come out of the assets of the firm. Despite the clear observations contained in the order of the Division Bench,

the Controlling Authority under the Payment of Gratuity Act, 1972 in its order dated 20th August, 2003 observed that since the order of the Learned Single Judge dated 28th November, 1996 was upheld in appeal, it was the order of the Single Judge that would have to be given effect to. The Controlling Authority proceeded to hold that "the Hon'ble Division Bench has nowhere mentioned that workmen were appointed as fresh recruits by the Agents and that they were not given continuity of service under the fresh contract". These observations are ex facie in the teeth of the order of the Division Bench. At the cost of repetition, it would be necessary to note that the Division Bench specifically observed that the employment of workmen subsequent to March 24, 1982 would amount to a fresh contract with the consequence that the terminal dues of the workmen for that period could not be borne out of the assets of the firm. Once the appointment of the workmen after 24th March, 1982 is held to amount to a fresh contract, it necessarily follows that in computing the terminal dues on account of gratuity for the workmen, the entire period of engagement cannot be regarded as being uninterrupted. As a matter of law and as a

matter of fact, the services would have to be regarded as having been interrupted consequent upon the event of dissolution of the partnership on 5th March, 1982.

14. In these circumstances, the order passed by the Controlling Authority under the Payment of Gratuity Act, 1982 in so far as it computes the arrears due and payable to the workmen in the annexure appended to the order would have to be quashed and set aside and is accordingly quashed and set aside. The order passed by the Labour Court on the application under Section 33C (2) of the Industrial Disputes Act, 1947, stands affirmed. In order to obviate any ambiguity in the matter it is clarified as follows:

i) The terminal dues of the workmen for the period ending 24th March, 1982 shall be liable to be paid out of the assets of the erstwhile partnership. In compliance with the order of the Labour Court dated 30th August, 2003 the advocates appearing on behalf of the agents of the Court Receiver (the Petitioners in Writ Petition 3021 of 2003) have addressed a letter dated 8th October, 2003 to

the Court Receiver with copies marked inter alia to the advocate appearing on behalf of the workmen. The Court Receiver is directed to pay the terminal dues of the workmen in accordance with the directions contained in the order of the Labour Court with interest as directed at the rate of 6% per annum till the date of payment;

ii) In respect of the period after 24th March, 1982, the liability to pay the terminal dues including the dues on account of gratuity shall be of the agents of the Court Receiver (the Petitioners in Writ Petition 3021 of 2003). It is an undisputed position that all the dues of the workmen save and except for one workman (P.C. James) have been duly paid in accordance with the memorandum of settlement dated 5th July, 1987. The Petitioners in Writ Petition 3021 of 2003 have placed on the record letters addressed to the aforesaid workman (P.C. James) on 10th October, 2003 and 21st October, 2003 by registered post, together with photocopies of the Pay Orders issued on 13th and 15th October, 2003. Since the amount was not collected by the workman, despite the offer made

to him as far back as in October, 2003, the Petitioners in Writ Petition 3021 of 2003 shall not be liable to pay any interest on and after 1st November, 2003, on the amount payable to the aforesaid workman. The workman is at liberty, however, to collect his dues which shall be paid forthwith on demand;

iii) It is an admitted position between the learned counsel that all the other workmen have been duly paid their terminal dues in pursuance of the memorandum of settlement dated 5th July, 1997.

In the circumstances, the Petitions shall stand disposed of in the light of the aforesaid directions. There shall be no order as to costs.